

Jul 07, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FRANK W.,

Plaintiff,

v.

FRANK BISIGNANO,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

No. 2:24-CV-00099-RHW

ORDER GRANTING PLAINTIFF'S  
OPENING BRIEF, REMANDING FOR  
THE AWARD OF BENEFITS AND  
CLOSING THE FILE

**ECF Nos. 9, 11**

**BEFORE THE COURT** is Plaintiff's Opening Brief and the Commissioner's Brief in response. ECF Nos. 9, 11. Attorney Christopher H. Dellert represents Plaintiff; Special Assistant United States Attorney W. Brian Jones represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion, ECF No. 9, and **DENIES** Defendant's Motion, ECF No. 11.

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Frank Bisignano, Commissioner of Social Security, is substituted as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

## BACKGROUND

The facts of the case are set forth in detail in the transcripts of the proceedings, the two prior administration decisions and the prior district court remand order, and only briefly summarized here. Plaintiff was born in 1972 and has an eighth-grade education and a GED. He was 46 years old on the date of alleged disability. His past employment includes truck driving (both logging and oil tank) and logging.

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on September 4, 2019, alleging amended onset of disability beginning July 16, 2019. Tr. 73, 201-08, 2874. The applications were denied initially and upon reconsideration. Tr. 133-40, 143-48. Administrative Law Judge (ALJ) Michael Scurry held a hearing on April 27, 2021, Tr. 35-72, and issued an unfavorable decision on May 21, 2021. Tr. 12-34. The Appeals Council denied Plaintiff's request for review on April 7, 2022, Tr. 1-6, and Plaintiff filed an action in United States District Court for the Western District of Washington. Tr. 2976-78. On November 4, 2022, the Court reversed and remanded the claim for further proceedings. Tr. 2980-84. On March 3, 2023, the Appeals Council vacated the ALJ's decision and remanded the case to an ALJ for further proceedings consistent with the order of the court. Tr. 2992.

On October 31, 2023, ALJ Allen Erickson held a remand hearing. Tr. 2906-46. On January 25, 2024, ALJ Erickson issued a partially favorable decision, finding Plaintiff disabled from July 16, 2019, through October 31, 2020, but that medical improvement occurred and as of November 1, 2020, Plaintiff's disability ended. Tr. 2874-96. The Appeals Council did not assume jurisdiction of the case, and the ALJ's January 25, 2024, decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on March 28, 2024. ECF No. 1.

## STANDARD OF REVIEW

The ALJ is tasked with “determining credibility, resolving conflicts in medical testimony, and resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence “is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971), (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ’s determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).

## SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or

1 mental impairment prevents the claimant from engaging in past relevant work. 20  
2 C.F.R. § 404.1520(a)(4). If a claimant cannot perform past relevant work, the ALJ  
3 proceeds to step five, and the burden shifts to the Commissioner to show (1) that  
4 Plaintiff can perform other substantial gainful activity and (2) that a significant  
5 number of jobs exist in the national economy which Plaintiff can perform. *Kail v.*  
6 *Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir. 1984); *Beltran v. Astrue*, 700 F.3d  
7 386, 389 (9th Cir. 2012). If a claimant cannot make an adjustment to other work in  
8 the national economy, the claimant will be found disabled. 20 C.F.R. §§  
9 404.1520(a)(4)(v), 416.920(a)(4)(v).

10 If the claimant is found disabled at any point in this process, the ALJ must  
11 also determine if the disability continues through the date of the decision. The  
12 Commissioner has established a multi-step sequential evaluation process for  
13 determining whether a person's disability continues or ends. 20 C.F.R. § 404.1594  
14 (2017). This multi-step continuing disability review process is similar to the five-  
15 step sequential evaluation process used to evaluate initial claims, with additional  
16 attention as to whether there has been medical improvement. *Compare* 20 C.F.R. §  
17 404.1520 *with* § 404.1594(f) (2017).

## 18 ADMINISTRATIVE DECISION

19 On January 25, 2024, the ALJ issued a decision, finding Plaintiff was  
20 disabled from his alleged onset date of July 16, 2019, through October 31, 2020,  
21 but that medical improvement occurred and as of November 1, 2020, Plaintiff's  
22 disability ended. Tr. 2874-96.

23 At step one, the ALJ found Plaintiff, who met the insured status  
24 requirements of the Social Security Act through December 31, 2023, had not  
25 engaged in substantial gainful activity since July 16, 2019, the date Plaintiff  
26 became disabled. Tr. 2878.

27 At step two, the ALJ determined Plaintiff had the following severe  
28 impairments during the period he was disabled, July 16, 2019, through October 31,

1 2020: status post-rectal cancer with surgeries and treatment; major depressive  
2 disorder (MDD); and social anxiety disorder. *Id.*

3 At step three, the ALJ found Plaintiff did not have an impairment or  
4 combination of impairments that met or medically equaled the severity of one of  
5 the listed impairments during the period he was disabled. Tr. 2880.

6 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
7 that from July 16, 2019, through October 31, 2020, Plaintiff could perform light  
8 work, with the following nonexertional limitations:

9 [N]o climbing ladders, ropes, or scaffolds; occasional climbing ramps  
10 and stairs; no crawling; no exposure to vibration and extreme heat;  
11 occasional exposure to hazards; ready access to bathroom facilities  
12 (within 100 feet of work station); understand, remember, and apply  
13 detailed, not complex, instructions; perform predictable tasks; not in a  
14 fast paced, production type environment where there is an assembly  
15 line or high hourly quota; exposure to occasional workplace changes;  
16 occasional interaction with the general public, coworkers, and  
supervisors, but not in team oriented environment; and would  
consistently miss more than 1 workday per work month.

17 Tr. 2881.

18 At step four, the ALJ found Plaintiff could not perform past relevant work.  
19 Tr. 2886.

20 At step five, the ALJ found that during the period he was disabled, from July  
21 16, 2019, through October 31, 2020, based on the testimony of the vocational  
22 expert, and considering Plaintiff's age, education, work experience, and RFC, there  
23 were no jobs that existed in significant numbers in the national economy that  
24 Plaintiff could have performed. Tr. 2887.

25 The ALJ thus concluded Plaintiff was under a disability within the meaning  
26 of the Social Security Act from July 16, 2019, through October 31, 2020. Tr.  
27 2888.  
28

1 The ALJ then determined that medical improvement occurred as of  
2 November 1, 2020, the date Plaintiff's disability ended; Plaintiff's impairments  
3 remained the same and he did not have an impairment that met or medically  
4 equaled a listing; and that the medical improvement that occurred was related to  
5 the ability to work because there had been an increase in Plaintiff's residual  
6 functional capacity, in that he would no longer consistently miss more than 1  
7 workday per work month. Tr. 2888, 2890.

8 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) beginning  
9 November 1, 2020, and determined that since that time Plaintiff could perform  
10 light work, with the following nonexertional limitations:

11 [N]o climbing ladders, ropes, or scaffolds; occasional climbing ramps  
12 and stairs; no crawling; no exposure to vibration and extreme heat;  
13 occasional exposure to hazards; ready access to bathroom facilities  
14 (within 100 feet of work station); understand, remember, and apply  
15 detailed, not complex, instructions; perform predictable tasks; not in a  
16 fast paced, production type environment where there is an assembly  
17 line or high hourly quota; exposure to occasional workplace changes;  
18 occasional interaction with the general public, coworkers, and  
19 supervisors, but not in team oriented environment.

20 Tr. 2890.

21 The ALJ found that as of November 1, 2020, Plaintiff was still unable to  
22 perform past relevant work, and that his age category had changed to an individual  
23 closely approaching advanced age. Tr. 2895.

24 The ALJ found that as of November 1, 2020, based on the testimony of the  
25 vocational expert, and considering Plaintiff's age, education, work experience, and  
26 RFC, there were jobs that existed in significant numbers in the national economy  
27 that Plaintiff could have performed, including the jobs of marker, router, and small  
28 products assembler. Tr. 2895-96.

1 The ALJ thus concluded Plaintiff was under a disability within the meaning  
2 of the Social Security Act from July 16, 2019, through October 31, 2020, but that  
3 Plaintiff's disability ended November 1, 2020, and that he had not become disabled  
4 again since that date. Tr. 2888, 2896.

### 5 ISSUES

6 Plaintiff seeks judicial review of the Commissioner's final decision denying  
7 him disability insurance benefits under Title II and Title XVI of the Social Security  
8 Act. The question presented is whether substantial evidence supports the ALJ's  
9 decision denying benefits and, if so, whether that decision is based on proper legal  
10 standards. Plaintiff raises the following issues for review (1) whether the ALJ  
11 erred by failing to comply with the prior remand order; (2) whether the ALJ erred  
12 by failing to meet his burden to show Plaintiff experienced medical improvement  
13 as of November 1, 2020; (3) whether the ALJ properly evaluated the medical  
14 opinion evidence; and (4) whether the ALJ properly evaluated Plaintiff's symptom  
15 complaints. ECF No. 9 at 2.

### 16 DISCUSSION

#### 17 A. Medical Opinions

18 Plaintiff contends the ALJ improperly evaluated the medical opinion  
19 evidence. ECF No. 9 at 14-15.

20 For claims filed on or after March 27, 2017, the ALJ must consider and  
21 evaluate the persuasiveness of all medical opinions or prior administrative medical  
22 findings from medical sources. 20 C.F.R. §§ 404.1520c(a) and (b), 416.920c(a)  
23 and (b). The factors for evaluating the persuasiveness of medical opinions and  
24 prior administrative findings include supportability, consistency, the source's  
25 relationship with the claimant, any specialization of the source, and other factors  
26 (such as the source's familiarity with other evidence in the file or an understanding  
27 of Social Security's disability program). 20 C.F.R. §§ 404.1520c(c)(1)-(5),  
28 416.920c(c)(1)-(5).



1 Supportability and consistency are the most important factors, and the ALJ  
2 must explain how both factors were considered. 20 C.F.R. §§ 404.1520c(b)(2),  
3 416.920c(b)(2). The ALJ may explain how they considered the other factors, but  
4 is not required to do so, except in cases where two or more opinions are equally  
5 well-supported and consistent with the record. *Id.* Supportability and consistency  
6 are explained in the regulations:

7  
8 (1) *Supportability.* The more relevant the objective medical  
9 evidence and supporting explanations presented by a medical source  
10 are to support his or her medical opinion(s) or prior administrative  
11 medical finding(s), the more persuasive the medical opinions or prior  
administrative medical finding(s) will be.

12 (2) *Consistency.* The more consistent a medical opinion(s) or prior  
13 administrative medical finding(s) is with the evidence from other  
14 medical sources and nonmedical sources in the claim, the more  
15 persuasive the medical opinion(s) or prior administrative medical  
finding(s) will be.

16 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2).

17 The Ninth Circuit addressed the issue of whether the 2017 regulatory  
18 framework displaced the longstanding case law requiring an ALJ to provide  
19 specific and legitimate reasons to reject an examining provider's opinion. *Woods*  
20 *v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new  
21 regulations eliminate any hierarchy of medical opinions, and the specific and  
22 legitimate standard no longer applies. *Id.* at 788-89, 792. The Court reasoned the  
23 "relationship factors" remain relevant under the new regulations, and thus the ALJ  
24 can still consider the length and purpose of the treatment relationship, the  
25 frequency of examinations, the kinds and extent of examinations that the medical  
26 source has performed or ordered from specialists, and whether the medical source  
27 has examined the claimant or merely reviewed the claimant's records. *Id.* at 790,  
28



1 792. Even under the 2017 regulations, an ALJ must provide an explanation  
2 supported by substantial evidence when rejecting an examining or treating doctor's  
3 opinion as unsupported or inconsistent. *Id.* at 792.

4 *1. Dr. Wright*

5 In May 2023, Dr. Wright provided an opinion concerning Plaintiff's ability  
6 to perform work-related activities. Tr. 3339. Dr. Wright noted he is a surgeon and  
7 had recently started treating Plaintiff for a stomal hernia. *Id.* He opined Plaintiff  
8 would require on average three breaks per eight-hour workday to clean his  
9 colostomy bag, and that on average he would need 11-20 minutes during each  
10 break to do this. *Id.* Dr. Wright explained Plaintiff was "dealing with significant  
11 challenges related to his colostomy care that make daily work extremely difficult if  
12 not impossible." *Id.*

13 The ALJ found Dr. Wright's opinion unpersuasive for the entire period at  
14 issue because was not supported and inconsistent with records showing some  
15 limitations but not to the extent suggested by Dr. Wright. Tr. 2884. The more  
16 relevant objective evidence and supporting explanations that support a medical  
17 opinion, and the more consistent an opinion is with the evidence from other  
18 sources, the more persuasive the medical opinion is. 20 C.F.R. §§  
19 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ concluded that Dr. Wright's  
20 opinion was not supported because: "the doctor does not indicate that these breaks  
21 would need to be in addition to normal breaks"; his opinion was not well supported  
22 by observations on physical exam "including no tenderness" and was inconsistent  
23 with the medical record because "there is no indication in the medical record at all  
24 that [Plaintiff] had to do this or had difficulty managing his ostomy"; and records  
25 showed Plaintiff had "been independent with his colostomy care . . . with little to  
26 no complaints to treating providers" and he had only "more recently developed  
27 some hernia issues, which he only described as 'somewhat uncomfortable.'" Tr.  
28 2884. Each of these reasons are unsupported by substantial evidence.

1 In terms of breaks, clarification as to whether breaks needed to clean the  
2 colostomy bag would be in addition to normal breaks was the primary reason the  
3 claim was remanded to the ALJ. Dr. Wright indicated Plaintiff would require, on  
4 average three breaks to clean his colostomy bag each day, and that on average he  
5 would need 11-20 minutes during each break to perform this activity. Tr. 3339.  
6 The language on Dr. Wright's form specifies that this is time needed "during each  
7 break to clean his colostomy bag." *Id.* The ALJ's finding that Dr. Wright's  
8 opinion was not persuasive for the entire period at issue because he did "not  
9 indicate that these breaks would need to be in addition to normal breaks" is not  
10 supported by substantial evidence.

11 The ALJ also discounted Dr. Wright's opinion because it was not well  
12 supported by observations on physical exam and was inconsistent with the medical  
13 record because Plaintiff had only "more recently developed some hernia issues,  
14 which he only described as 'somewhat uncomfortable.'" Tr. 2884. The more  
15 relevant objective evidence and supporting explanations that support a medical  
16 opinion, and the more consistent an opinion is with the evidence from other  
17 sources, the more persuasive the medical opinion is. 20 C.F.R. §§  
18 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). Additionally, An ALJ must consider all  
19 the relevant evidence in the record and may not point to only those portions of the  
20 records that bolster his findings. *See, e.g., Holohan v. Massanari*, 246 F.3d 1195,  
21 1207-08 (9th Cir. 2011) (holding that an ALJ cannot selectively rely on some  
22 entries in plaintiff's records while ignoring others).

23 Here, the ALJ found Dr. Wright's opinion was not well supported by  
24 observations upon exam, including no tenderness, or Plaintiff's description of  
25 related symptoms. Tr. 2884. The ALJ cited to one normal exam finding from one  
26 exam, but failed to address Dr. Wright's many other observations upon physical  
27 exam. Dr. Wright's findings showed "significant eventration around the ostomy in  
28 the [l]eft [m]id [a]bdomen," Tr. 3432, "fairly bothersome bulging around the

1 ostomy site with poor stomal appliance fitting,” as well as “some pain around the  
2 site of the stoma . . . most bothered by frequent issues related to the stomal  
3 appliance.” Tr. 3430. At another visit in April 2023 Dr. Wright explained:

4 to recap, he developed a high grade distal colonic obstruction in  
5 2019/2020 secondary to a Locally Advanced Rectal Cancer,  
6 necessitating Diverting Loop Colostomy and Neoadjuvant  
7 Chemoradiation, followed later by Completion APR and End  
8 Colostomy. Soon after, he began to develop bulging around the stoma  
9 that has only worsened since with pain in the area and a consistently  
unstable appliance. He is currently homeless and essentially stays  
outside.

10 Tr. 3376. Dr. Wright noted attempt at surgical repair was warranted, although he  
11 noted that the “area of eventration may persist and this the general bulging in the  
12 area may not be resolved to a significant enough degree to improve his stomal  
13 function and satisfaction.” *Id.* Dr. Wright expressed a “relatively high risk of  
14 recurrence” and concern about Plaintiff’s recovery from any surgery, as he was  
15 homeless. Tr. 3377-38. Dr. Wright also noted CT imaging in March 2023 showed  
16 “a moderate amount of bowel herniated along the ostomy in the left mid abdomen”  
17 without obstruction or compromise; and the radiologist’s impression was “stomal  
18 hernia with protruding small bowel.” Tr. 3432; *see* Tr. 3442.

19 Plaintiff testified that the poor fit caused by the persistent stomal hernia  
20 caused problems including leaking, and made it hard to clean, change and put  
21 everything back on – all issues relevant to the need for breaks and the length of  
22 time he would dedicate to colostomy care each work-day. Tr. 2927-30.

23 None of these additional findings made by Dr. Wright or descriptions by  
24 Plaintiff are mentioned by the ALJ, who concluded Plaintiff’s disability ended as  
25 of November 1, 2020, because he experienced medical improvement because his  
26 “chemo/radiation therapy end[ed] months before, and effects therefrom diminished  
27 by October 2020” and “thereafter, few physical issues are indicated, no significant  
28 complications are noted, and he has remained clear of cancer to date.” Tr. 2890-

1 91. Records, however, show persistent stomal hernia as of January 2020, a  
2 complication of Plaintiff's cancer treatment which, as noted by Dr. Wright, caused  
3 Plaintiff difficulty with his colostomy throughout the period at issue. *See, e.g.*, Tr.  
4 1271, 1276-78, 3366, 3376, 3430, 3442, 3478, 3482, 3521.

5 The ALJ's conclusion Dr. Wright's opinion was not persuasive because it  
6 was not well supported by observations on physical exam and was inconsistent  
7 with the medical record is also not supported by substantial evidence.

8 Accordingly, the ALJ failed to provide reasons supported by substantial  
9 evidence to discount Dr. Wright's opinion.

#### 10 **B. Prior Remand Order**

11 Plaintiff also contends the ALJ erred by failing to comply with the prior  
12 remand order.

13 In Social Security cases, when a case is remanded to an ALJ, the ALJ must  
14 take any action ordered by the appeals council and must follow the specific  
15 instructions of the reviewing court. 20 C.F.R. § 416.1477; *Samples v. Colvin*, 103  
16 F. Supp. 3d 1227, 1231-32 (D. Or. 2015). This case was previously remanded by  
17 the district court for the ALJ to "further develop the record regarding the  
18 vocational limitations resulting from Plaintiff's need to change his colostomy bag  
19 and reconsider any other parts of the decision as needed." Tr. 2984. The district  
20 court determined this development of the record was required because the  
21 vocational expert at the 2021 hearing "referenced breaks totaling one hour to cover  
22 changing the colostomy bag and laying down due to rectal pain, but it is not clear  
23 how long the colostomy-related breaks would be." *Id.* The court ordered further  
24 development of the record on remand to determine colostomy-related breaks. *Id.*

25 The record on remand clearly evidenced Plaintiff had locally advanced  
26 cancer that was treated with surgery, including removal of his rectum and portions  
27 of his colon, followed by extensive recovery as well as chemotherapy and  
28 radiation. This treatment did resolve his cancer, but Plaintiff testified, and

1 treatment records and medical opinions support, that he has experienced residuals  
2 and complications<sup>2</sup> of treatment; and he requires a colostomy bag, which must be  
3 emptied and cleaned several times a day and is complicated by “issues with  
4 abdominal wall eventration and herniation around current stomal site.” *See, e.g.*,  
5 Tr. 3339, 3366, 3376, 3430, 3432-33, 3478-79, 3482, 3519-21.

6 At the remand hearing, Plaintiff again provided detailed testimony about his  
7 extensive rectal cancer treatment that resolved the cancer but left him with severe  
8 complications throughout the period at issue, including a persistent stomal hernia  
9 which caused problems with fit and adhesion of the colostomy appliance to his  
10 stoma, required additional surgeries, and caused issues with the stoma including

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11  
12 <sup>2</sup> Despite the ALJ’s finding that after October 2020 there were few physical issues  
13 and no significant complications noted, records show several  
14 complications/residuals from treatment, in addition to the stomal hernia, which  
15 were not addressed by the ALJ or discounted at step two. These include evidence  
16 of persistent peripheral neuropathy in his upper extremities and feet from  
17 chemotherapy; difficulty with urination and frequent urination, as well as damage  
18 to the perineum from radiation, and large hydrocele(s), that his providers noted  
19 should be addressed at the time of stomal hernia surgical repair. *See, e.g.*, Tr.  
20 1245-46, 1284, 1287, 3479, 3482, 3366, 3520-21. Records also show a left  
21 shoulder impairment (Hill-Sachs deformity) that caused recurrent dislocation of the  
22 left shoulder, requiring sedation and manual reduction when this occurred;  
23 objective findings include imaging not addressed by the ALJ as well as clinical  
24 findings including loss of range of motion and reaching ability. *See, e.g.*, Tr. 21,  
25 25, 2880, 3521, 3367. Notably, the prior (2021) ALJ decision found a severe  
26 shoulder impairment, but the current ALJ discounted it at step two, and did not  
27 include any reaching limitations in the RFC.  
28

1 pain, as well as difficulty keeping a colostomy bag attached and clean throughout  
2 and after the period the ALJ determined he was disabled. Tr. 2921-30.

3 The remand record included the medical opinion of Dr. Wright, who  
4 clarified the amount of time (11-20 minutes each break) required for colostomy  
5 cleaning during a workday. The opinion is consistent with Plaintiff's symptom  
6 reports as well as the vocational expert testimony at both administrative hearings  
7 that such breaks would be work preclusive. See, e.g., Tr. 70, 2912-13, 2927-30,  
8 2944, 3339. Indeed, at the 2023 remand hearing, the vocational expert explained  
9 that an hour each day dealing with a colostomy bag "would significantly impact  
10 productivity" and "their job would be in jeopardy fairly soon due to the lost time  
11 on the task." Tr. 2944. Dr. Wright also explained Plaintiff was "dealing with  
12 significant challenges related to his colostomy care that make daily work extremely  
13 difficult if not impossible." Tr. 3339. Despite having the benefit of Dr. Wright's  
14 opinion, as discussed *supra*, the ALJ discounted the opinion for reasons that were  
15 not supported by substantial evidence.

16 Despite describing Plaintiff's testimony as "compelling" and unembellished,  
17 the ALJ found Plaintiff disabled for only a portion of the period at issue and  
18 claimed to have "addressed the specific issues raised in the District Court's order  
19 and the Appeal Council's remand order." Tr. 2874. While the ALJ did list several  
20 complications and/or residuals of Plaintiff's treatment (including hernia, poor  
21 stoma appliance fitting, "significant eventration" as well as perineal post-  
22 radiation), he ALJ failed to assess the ongoing effects of any of these  
23 complications and failed to further develop the record regarding vocational  
24 limitations specifically resulting from Plaintiff's need to change his colostomy bag  
25 or to account for the resultant need for breaks.

26 Accordingly, the ALJ's decision again failed to account for Plaintiff's need  
27 for breaks to change his colostomy bag and failed to "further develop the record  
28

1 regarding the vocational limitations resulting from Plaintiff's need to change his  
2 colostomy bag" as ordered by the district court on remand. This is reversible error.

3 **C. Symptom Claims and Medical Improvement**

4 Plaintiff also contends the ALJ also erred by improperly rejecting Plaintiff's  
5 subjective complaints and erred in finding medical improvement as of November  
6 1, 2020. ECF No. 9 at 10-13, 18.

7 Having determined the claim will be remanded on other grounds, and as the  
8 issue of medical improvement is generally addressed by the discussion of errors in  
9 relation to Dr. Wright's opinion and compliance with the remand order, discussed  
10 *supra*, the Court declines to reach the additional issues. *See Hiler v. Astrue*, 687  
11 F.3d 1208, 1212 (9th Cir. 2012) ("Because we remand the case to the ALJ for the  
12 reasons stated, we decline to reach [plaintiff's] alternative ground for remand.').

13 **CONCLUSION**

14 Having reviewed the record and the ALJ's findings, the Court finds the  
15 ALJ's decision Plaintiff was disabled from his amended alleged onset date, July  
16 16, 2019, through October 31, 2020, but was no longer disabled as of November 1,  
17 2020, is not supported by substantial evidence and not free of harmful error.  
18 Plaintiff argues the decision should be reversed and remanded for the payment of  
19 benefits as of the date the ALJ determined he was no longer disabled. ECF No. 9  
20 at 19. The Court agrees.

21 The Court has the discretion to remand the case for additional evidence and  
22 findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award  
23 benefits if the record is fully developed and further administrative proceedings  
24 would serve no useful purpose. *Id.* Remand is appropriate when additional  
25 administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d  
26 759, 763 (9th Cir. 1989). In this case, the record is adequate for a proper  
27 determination to be made, and further development is not necessary.



1 The Ninth Circuit has set forth a three part standard for determining when to  
2 credit improperly discounted evidence as true: (1) the record has been fully  
3 developed and further administrative proceedings would serve no purpose; (2) the  
4 ALJ has failed to provide legally sufficient reasons for rejecting the evidence in  
5 question; and (3) if the improperly discredited evidence were credited as true the  
6 ALJ would be required to find Plaintiff eligible for benefits. *Garrison v. Colvin*,  
7 759 F.3d 995, 1020 (9th Cir. 2014).

8 In this case, all three parts of the standard are met. The record has been fully  
9 developed and further proceedings are not necessary. As discussed *supra*, the ALJ  
10 failed to provide legally sufficient reasons to discount the medical opinion of Dr.  
11 Wright, failed to account for Plaintiff's required breaks to change his colostomy  
12 bag, and failed to further assess vocational limitations resulting from Plaintiff's  
13 need to change his colostomy bag as previously ordered by the district court.  
14 Therefore, the second prong of the credit-as-true rule is met. The third prong of  
15 the credit-as-true rule is satisfied because if the medical opinion of Dr. Wright was  
16 credited as true, the ALJ would be required to find Plaintiff disabled.

17 Finally, the record as a whole does not leave serious doubt as to whether  
18 Plaintiff was disabled during the period at issue. *See Garrison*, 759 F.3d at 1021.  
19 Plaintiff underwent treatment for advanced cancer with extensive surgeries and  
20 recovery, as well as subsequent chemotherapy and radiation therapy, which  
21 resolved the cancer but left him with complications, including stomal hernia, which  
22 persisted throughout the period at issue. The complications caused problems with  
23 fit and adhesion of the colostomy appliance to his stoma, required additional  
24 surgeries. His surgeon, Dr. Wright, explained Plaintiff was "dealing with  
25 significant challenges related to his colostomy care that make daily work extremely  
26 difficult if not impossible." *Id.* The ALJ himself noted Plaintiff's compelling  
27 testimony, which Plaintiff repeated at two hearings. At the time of the second  
28

1 hearing, Plaintiff was homeless, causing his providers significant concern about his  
2 prognosis.

3 Moreover, the credit-as-true rule is a “prophylactic measure” designed to  
4 motivate the Commissioner to ensure that the record will be carefully assessed and  
5 to justify “equitable concerns” about the length of time which has elapsed since a  
6 claimant has filed their application. *Treichler v. Comm’r of Soc. Sec. Admin.*, 775  
7 F.3d 1090, 1100 (9th Cir. 2014) (internal citations omitted). Here, Plaintiff filed  
8 for benefits 2019, and the case was already remanded once by the Western District  
9 of Washington in 2022. While on remand the ALJ found Plaintiff disabled for 15  
10 months of the period at issue, the ALJ failed to follow the district court’s remand  
11 order and failed to properly assess medical opinion evidence that showed ongoing  
12 disability, confirmed by vocational expert testimony. As discussed above, this  
13 Court is remanding for the same error, as the ALJ again failed to account for  
14 Plaintiff’s need for breaks to change his colostomy bag and failed to further  
15 develop the record regarding vocational limitations resulting from the need to  
16 change his colostomy bag as previously ordered by the district court. Considering  
17 the delay of ongoing benefits in a case that was filed over five years ago, and  
18 harmful errors by the ALJ over two decisions, it is appropriate in this case for this  
19 Court to use its discretion and apply the “credit as true” doctrine pursuant to Ninth  
20 Circuit precedent.

21 As such, the Court recommends the case be remanded for an immediate  
22 calculation of benefits as of the date the ALJ determined he was no longer  
23 disabled.

24 Accordingly, **IT IS HEREBY ORDERED:**

25 1. Plaintiff’s Opening Brief, **ECF No. 9**, is **GRANTED**. The  
26 Commissioner’s decision is **REVERSED** and this matter is **REMANDED** to the  
27 Commissioner of Social Security for the immediate calculation and award of  
28 benefits as of the date the ALJ determined Plaintiff was no longer disabled.

2. Defendant's Brief in Response, **ECF No. 11**, is **DENIED**.

3. Upon proper presentation, the Court will consider Plaintiff's application for fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

The District Court Executive is directed to update the docket sheet to reflect the substitution of Frank Bisignano as Defendant, enter this Order, **ENTER JUDGMENT** in favor of Plaintiff, forward copies to counsel, and **CLOSE THE FILE**.

DATED July 3, 2025.

s/Robert H. Whaley  
ROBERT H. WHALEY  
Senior United States District Judge